

The Senate Judiciary Committee offered the following substitute to SB 119:

A BILL TO BE ENTITLED
AN ACT

To amend Titles 17 and 24 of the Official Code of Georgia Annotated, relating to criminal procedure and evidence, respectively, so as to provide victims of crime and delinquent acts and members of their immediate family with certain rights; to provide for certain procedures relating to a victim of a crime or delinquent act or member of the immediate family; to provide for certain exemptions for a victim of a crime or delinquent act; to provide certain requirements relating to the testimony of the victim of a crime or delinquent act; to provide for application to criminal proceedings and juvenile delinquency proceedings; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 17 of the Official Code of Georgia Annotated, relating to the criminal procedure, is amended in Chapter 17, the "Crime Victims' Bill of Rights," by adding a new Code section to read as follows:

"17-17-17.

(a) A member of the immediate family of a victim may not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify unless the party subpoenaing such person establishes that such family member is a material and necessary witness to such hearing, trial, or proceeding and the court finds that there is a substantial probability that such person's presence would impair the conduct of a fair trial.

(b) The provisions of this Code section shall apply to all criminal proceedings and delinquency proceedings in juvenile court.

(c) The provisions of this Code section shall not be construed as impairing the authority of a judge to remove a person from a trial or hearing or any portion thereof for the same causes and in same manner as the rules of court or law provides for the exclusion or removal of the defendant."

SECTION 2.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising Code Section 24-9-61.1, relating to the presence in court of the victim of a criminal offense, as follows:

"24-9-61.1.

(a) The victim of a delinquent act or criminal offense ~~may~~ shall be entitled to be present during the trial or hearing or any portion thereof in any court exercising jurisdiction over such offense, including a juvenile court; provided, however, that a judge may remove a victim from a trial or hearing or any portion thereof for the same causes and in same manner as the rules of court or law provides for the exclusion or removal of the defendant or, after notice and hearing, the court determines such person's presence would impair the conduct of a fair trial. ~~It shall be within the sole discretion of the judge to implement the provisions of this Code section and determine when to allow such victim to be present in such court and, if such victim is permitted to be present, to determine the order in which the testimony of such victim shall be given.~~ A motion to exclude a victim from the courtroom for any reason other than misconduct shall be made and determined prior to jeopardy attaching.

(b) A victim of a delinquent act or criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section 24-9-61 requiring the separation or exclusion of witnesses from court; provided, however, that the court may require that the victim be scheduled to testify as early as practical in the proceedings.

~~(b)(c)~~ (c) The failure of a victim to exercise any right granted by this Code section shall not be a cause or ground for an appeal of a conviction by a defendant or for any court to set aside, reverse, or remand a criminal conviction."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.